

Appendix A



COUNTY OF SACRAMENTO

WATER RESOURCES DIVISION.....
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JOHN W. NEWTON, Director
General Services
PATRICK L. GROFF, Director
Public Works Administration

Board of Supervisors
City Council
Sacramento, California

June 15, 1999

Honorable Members in Session:

**SUBJECT: MODIFIED WATER SUPPLY PROJECT PROPOSAL FOR THE EAST BAY
MUNICIPAL UTILITY DISTRICT AND THE SACRAMENTO PARTIES**

LOCATION AND COUNCIL DISTRICT: City and County-wide

RECOMMENDATION: Staff recommends that City Council and the Board of Supervisors:

- ♦ Adopt the attached resolution approving the *Modified Proposal* as the basis for continuing discussions with the East Bay Municipal Utility District (EBMUD),
- ♦ Request that EBMUD's Board of Directors approve, at their June 22, 1999 Board Meeting, the *Modified Proposal* as the basis for continuing discussions.
- ♦ Request the United States Bureau of Reclamation and EBMUD to extend the comment period on their draft Amendatory Water Service Contract a minimum of an additional 90 days in order to define proposal details and amendatory contract language consistent with the *Modified Proposal*.

FOR COUNCIL AND BOARD MEETING OF: June 15, 1999

SUMMARY

With support provided by federal mediators, representatives of the City, County, EBMUD, and the Sacramento Environmental Water Caucus met over the past few weeks to further clarify the Sacramento parties' April 28, 1999 *Modified Proposal*. As a result and reflection of this effort the attached *Modified Proposal*, dated June 8, 1999, is being submitted to the City Council and Board of Supervisors for approval as the basis for continuing discussions. If approved, this *Modified Proposal* will be presented to EBMUD's Board of Directors at their June 22, 1999 meeting. In addition, the Board of EBMUD will be asked to likewise approve Sacramento's *Modified Proposal* as the basis for continuing discussions. The Bureau of Reclamation and EBMUD will also be asked to extend the comment period for their draft

Water Service Contract. Unless otherwise extended, the draft Amendatory Water Service Contract comment period expires on June 28, 1999.


BACKGROUND INFORMATION

- ♦ On April 28, 1999, the Sacramento City Council, the Sacramento County Board of Supervisors, and the Board of Directors of EBMUD met in joint session in order to hear, discuss, and receive public testimony relative to the Sacramento Parties' *Modified Proposal*.
- ♦ The purpose of the *Modified Proposal* was to provide EBMUD an alternative American River water supply project.
- ♦ As a result of that joint meeting, staffs were directed to meet in order to clarify the proposal.
- ♦ Meetings, with the assistance of two mediators provided by the U.S. Federal Mediation and Conciliation Service, have taken place over the past few weeks.
- ♦ Members of the Sacramento Environmental Water Caucus have been present during most of the meetings. The Sacramento Environmental Water Caucus is comprised of the Environmental Council of Sacramento, Friends of the River, Sierra Club - Motherlode Chapter, and Save the American River Association.
- ♦ A revised *Modified Proposal* dated June 8, 1999 was produced by the Sacramento parties as a result of joint discussions at the mediated meetings.
- ♦ If approved by the City Council and Sacramento County Board of Supervisors, staff will formally present this revised *Modified Proposal* to EBMUD's Board of Directors at their June 22, 1999 meeting.
- ♦ It is requested that EBMUD's Board of Directors approve the *Modified Proposal* as the basis for continuing discussions at their June 22, 1999 meeting.
- ♦ It is further requested that EBMUD and the U.S. Bureau of Reclamation further extend the comment period for their Draft Amendatory Water Service Contract a minimum of an additional 90 days to define proposal details and amendatory contract language consistent with the *Modified Proposal*.

Board of Supervisors
City Council
Modified Water Supply Project Proposal for EBMUD & Sacramento Parties
June 15, 1999
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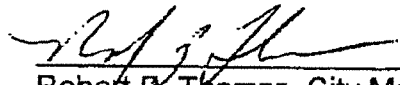
Respectfully submitted,


Jim Sequeira, Director of Utilities


Robert F. Shanks, Director District Engineering

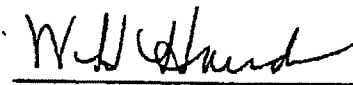
APPROVED:

APPROVED:


Robert P. Thomas, City Manager

Terry Schutten, County Executive

By:


Warren H. Harada, Administrator
Public Works Agency

Contact for additional information:

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874-8232

cc: Robert Ryan, County Counsel
Stuart Somach, DeCuir & Somach
Donna Dean, WRD
Meredith Husted, WRD

**MODIFIED WATER SUPPLY PROJECT PROPOSAL
FOR THE EAST BAY MUNICIPAL UTILITY DISTRICT
AND THE SACRAMENTO PARTIES**

RESOLUTION NO. _____

BE IT RESOLVED AND ORDERED that the CHAIR of BOARD OF SUPERVISORS on behalf of the COUNTY OF SACRAMENTO, a political subdivision of the State of California, authorize approval of the attached *Modified Proposal* as the basis for continuing discussions with the EAST BAY MUNICIPAL UTILITY DISTRICT (EBMUD) and requests the EBMUD Board of Directors approve the *Modified Proposal* at their June 22, 1999 Board Meeting and requests the United States Bureau of Reclamation and EBMUD to extend the comment period on their draft Amendatory Water Service Contract for a minimum of an additional 90 days in order to define proposal details and amendatory contract language consistent with the *Modified Proposal* and to do and perform everything necessary to carry out the purpose of this Resolution.

ON A MOTION BY Supervisor _____, seconded by Supervisor

_____, the foregoing resolution was passed and adopted this _____ day of _____ 19__ by the following vote, to wit:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

ABSTAIN: Supervisors:

Chairperson, Board of Supervisors,
County of Sacramento

(SEAL)

ATTEST:

Cindy H. Turner, Clerk
Board of Supervisors

MODIFIED PROPOSAL¹

JUNE 8, 1999

1. EBMUD could divert at Site 5 when flows at the mouth of the Lower American River would be above the Hodge threshold. (Please see attachment #1 - "Proposed Interpretation of the Hodge Threshold for Purposes of the Modified Proposal.")
2. The City, County and the Sacramento Environmental Water Caucus² would support EBMUD banking water in groundwater basins in Sacramento and San Joaquin counties at reasonable ratios (e.g. 2 -3 acre feet "put" to 1 acre foot "take") subject to Sacramento Parties review of the details of the banking program.
3. The City, County, and the Sacramento Environmental Water Caucus would request Judge Hodge to amend his order to allow EBMUD to bank American River water (diverted only at Site 5 above the Hodge threshold) in Sacramento or San Joaquin counties. The order would be specifically amended to allow EBMUD to sell water diverted from the American River to third parties as part of the conjunctive use program in Sacramento and San Joaquin. This would help EBMUD get a dry year supply from banked groundwater.
4. Sacramento County would work with its stakeholders to provide assurances that EBMUD could bank water in Sacramento county. This could include in lieu storage in the Galt groundwater subbasin and in lieu, and perhaps direct injection, in the South Sacramento County groundwater subbasin (including Zone 40).
5. Sacramento County would also work with stakeholders to provide EBMUD enforceable assurances that it would be able to withdraw agreed upon amounts of previously stored water from the subbasins under agreed upon conditions. This would be subject to adequate protections and improvements for Galt area and South Sacramento county groundwater users.
6. It is estimated that a total of 75,000 acre feet of water could be withdrawn by EBMUD from a groundwater bank in the South Sacramento and Galt subbasins over a three year period. (Please see attachment #2 - "EBMUD Conjunctive Use In Sacramento County.")

¹ This is an elaboration of the Modified Proposal of February 26, 1999 that was presented by Sacramento Parties to the East Bay Municipal Utility District.

² The Sacramento Environmental Water Caucus is comprised of the Environmental Council of Sacramento, Friends of the River, sierra Club - Motherlode Chapter, and Save the American River Association

7. The City, County and Sacramento Environmental Water Caucus would support EBMUD storing water diverted from Site 5 above the Hodge threshold in an existing off-stream reservoir, e.g. Los Vaqueros, for EBMUD's direct use in dry years³.
8. The City, County and Sacramento Environmental Water Caucus would support all state legislation needed to allow American River water to be exported consistent with all requirements of the Modified Proposal.
9. The City, County and Sacramento Environmental Water Caucus would support including funds in the 1999 Water Bond to help pay a portion of the costs for pumpback to Folsom South Canal and conjunctive use facilities in Sacramento and San Joaquin counties (that could help provide EBMUD's dry year supply). Funds would be contingent on adherence by EBMUD and the Sacramento parties to all of the conditions of the Modified Proposal.
10. EBMUD could take Pardee Dam and tunnel out of service for inspection and maintenance in a wet year by:
 - a. Using 155 cubic feet per second of American River water diverted at Site 5; and
 - b. Diverting Mokelumne River water from or below Pardee Reservoir and pumping it into the Mokelumne Aqueduct.
11. No EBMUD diversions from Nimbus. (Please see attachment # 3 - "No EBMUD Diversion at Nimbus.")
12. EBMUD could not sell any water diverted from the American River water to any third parties except as part of a conjunctive use program in Sacramento and San Joaquin counties consistent with point number three above.
13. The diversion and pipe from Site 5 to the Folsom South Canal and Folsom South Canal extension would be sized for a maximum of 155 cubic feet per second.
14. Sacramento environmentalists would be included in all substantive negotiations on the Modified Proposal and there would be consultation with Bay Area environmentalists.
15. Operation of the American River and Mokelumne River supplies would be coordinated to ensure there would be no indirect sale of American River water.

³ The Sierra Club and Friends of the River, whose interests extend beyond the American River, will review this (in the next 90 days) with their members outside of the Sacramento area.

(Please see attachment #4 - "Coordination of American River and Mokelumne River Operations.")

16. The benefits to EBMUD of the American River water supply would be limited to EBMUD's existing service area. It could not be used as a source of supply for an expansion of EBMUD's service area. (Please see attachment #5 - "Water Supply for EBMUD Service Area Expansion.")
17. There must be an adequate EIR and EIS analysis of the Modified Proposal.
18. EBMUD would provide \$5 million for previously identified community enhancements (e.g. purchase of Uruttia property, parkway improvements, etc.). (Please see attachment # 6 - "American River Parkway Improvements.")
19. EBMUD would fully comply with City of Sacramento and Sacramento County requirements to adequately mitigate project construction impacts.
20. EBMUD would provide \$125,000 annually (adjusted for inflation) to the Lower American River Habitat Management Element. (Note: the City and County will each be making the same level of annual contributions).
21. The City of Sacramento would agree to construct, operate and maintain the facilities of the Modified Proposal that would be within Sacramento City limits.
22. Assurances that all conditions in the Modified Proposal (e.g. no Nimbus diversion, no diversions below the Hodge threshold, no sales to third parties, etc) would be met. (Please see attachment #7 - "Assurances.")

Attachment # 1 - "Proposed Interpretation of the Hodge Threshold for Purposes of the Modified Proposal."

EBMUD can divert at Site 5 only when all of the following conditions are met:

1. Hodge flows will remain at the mouth of the American River; and
2. Under the Hodge decision there are additional restrictions on diversions including, "An additional 60,000 AFA will be maintained in reserve at the reservoir from mid-October through June for release upon the recommendation of the Department of Fish and Game in response to specific fishery requirements."

For the Modified Proposal only, the 60,000 acre foot carryover limitation in the Hodge Decision would be replaced by the following conditions:

- a. EBMUD can divert only in years when the projected March to November unimpaired inflow to Folsom Reservoir is greater than 1,600,000 acre feet.
 - b. In December, January and February following a March through November period when the unimpaired inflow into Folsom Reservoir was less than 1,600,000 acre feet, EBMUD would not divert water until such time as, or after, water is being released from Folsom Reservoir for flood protection.
3. The restrictions above apply to EBMUD's diversions of any American River water, not just water under its Central Valley Project contract.

Attachment # 2 - EBMUD CONJUNCTIVE USE IN SACRAMENTO COUNTY

UNDERLYING PRINCIPLES

1. Groundwater users in the subbasin (South Area subbasin or Galt Area Subbasin) must be represented in negotiations for conjunctive use in the subbasin.
2. Groundwater users in the subbasin must receive some benefit from the conjunctive use program. EBMUD could bank water in groundwater basins in Sacramento county at reasonable ratios (e.g. 1 -3 acre feet "put" to 1 acre foot "take").
3. It is estimated that a total of 75,000 acre feet of water could be withdrawn by EBMUD from a groundwater bank in the South Sacramento and Galt subbasins over a three year period.
4. The City, County, and the Sacramento Environmental Water Caucus would request Judge Hodge to amend his order to allow EBMUD to bank American River water (diverted only at Site 5 above the Hodge threshold) in Sacramento or San Joaquin counties. The order would be specifically amended to allow EBMUD to sell water diverted from the American River water to third parties as part of the conjunctive use program in Sacramento and San Joaquin. This would help EBMUD get a dry year supply from banked groundwater.
5. Sacramento County would work with its stakeholders to provide assurances that EBMUD could bank water in Sacramento county. This could include in lieu storage in the Galt groundwater subbasin and in lieu, and perhaps direct injection, in the South Sacramento County groundwater subbasin (including Zone 40).
6. Sacramento County would also work with groundwater stakeholders to provide EBMUD enforceable assurances that it would be able to withdraw agreed upon amounts of previously stored water from the subbasins under agreed upon conditions. This would be subject to adequate protections and improvements for Galt area and South Sacramento county groundwater users.

WHO WOULD BE IN THE NEGOTIATIONS

(Note: the Sacramento City County Office of Metropolitan Water Planning, which staffs the Water Forum, would be available to help mediate this negotiation as they did successfully in the North area of Sacramento County.)

1. EBMUD
2. Omochumne Hartnell Water District
3. Galt Irrigation District
4. Clay Water District
5. Sacramento County Farm Bureau
6. Sacramento County Water Agency
7. City of Galt
8. City of Sacramento
9. Citizens Utilities
10. Arden Cordova Water Service
11. Elk Grove Water Works
12. Florin County Water District
13. Fruitridge Vista Water Company
14. Representatives of industrial groundwater users
15. Representatives of agricultural/residential water users
16. Representatives of overlying land owners who do not currently utilize groundwater
17. Other stakeholders not specifically listed

INITIAL LIST OF POINTS TO BE NEGOTIATED

1. How much water can be banked and under what conditions:
 - a. In lieu recharge
 - b. Spreading basins
 - c. Injection
2. How much water can be extracted by EBMUD and under what conditions
3. What benefit is reasonable for groundwater users in Sacramento county
4. Location of banking facilities and extraction facilities
5. Relationship of conjunctive use program to AB 3030 plan being developed by Omochumne Water District, Clay Water District and Galt Irrigation District
6. Financing of the conjunctive use program

7. Other issues as identified by the parties

SCHEDULE

(This needs to be jointly developed among the negotiators for the conjunctive use program. However, extrapolating the experience with forming the Sacramento North Area Groundwater Management Authority to the unique circumstances of the South Area subbasin and the Galt Area subbasin would suggest a 2 to 3 year time period.)

SACRAMENTO PARTIES WOULD ALSO SUPPORT ADDITIONAL
CONJUNCTIVE USE IN SAN JOAQUIN COUNTY.

Attachment # 3 - No EBMUD Diversion at Nimbus

1. All identified assurances incorporating the Nimbus disabling language (see list below) and other conditions are in place before any contracts for construction of any part of the project can be awarded.
2. Nimbus is disabled by EBMUD's choice of either of the following two options:
 - a. The diversion and pumpback are constructed first. When the diversion and pumpback are found by EBMUD to be substantially complete and ready for beneficial use, EBMUD is permanently and irrevocably prohibited from receiving any water (CVP or other) diverted at Nimbus. At that time EBMUD can begin construction of the Folsom South Canal extension; or
 - b. When EBMUD receives all necessary approvals for the project and when EBMUD awards the first contract for construction of any part of the project (e.g. diversion, pumpback or Folsom South Canal extension), EBMUD is permanently and irrevocably prohibited from receiving any water (CVP or other) diverted from Nimbus. At that time EBMUD can begin concurrent construction of the diversion, pumpback, and Folsom South Canal extension.

Locations for the Nimbus disable assurance (along with other necessary assurances, e.g. pipe size, clarification of Hodge threshold, no sales to third parties, etc.)

1. Amended CVP contract
2. State legislation - also including exemption of facilities of the Modified Proposal from Water Code section 1810 (the "Katz wheeling law") and other provisions to enable project
3. Amendment to CVP water rights for that diversion (also tied to updated lower American River flow standard)
4. Amendment to Hodge decision, (which would also specifically authorize groundwater banking in Sacramento and San Joaquin counties)
5. EIR and EIS and applications for regulatory approval for the project that identify the Modified Proposal with all of the conditions as the only project.

Attachment #4 - Coordination of American River and Mokelumne River Operations

1. Sacramento Parties recognize and accept that in some circumstances American River diversions by EBMUD in one year might result in spills of water from Pardee Reservoir in the following year. However EBMUD shall not divert water from the American River for the primary benefit of augmenting flows in the Mokelumne River.
2. (Note: the following provision is to ensure that there is no indirect sale of American River water.) EBMUD shall not sell any Mokelumne River water in any year that EBMUD takes American River water or in any year following a year when EBMUD received water diverted from the American River.

Attachment #5 - Water Supply for EBMUD Service Area Expansion

As part of the State legislative assurances, a requirement would be added that for EBMUD's service area to be expanded or if EBMUD is required to provide water to an area outside its service area, there must be an increase in EBMUD's supply and use of water sufficient to serve that area from sources other than the American or Mokelumne Rivers.

Attachment # 6 - American River Parkway Improvements

Upon award of the first contract for construction of any element of the Modified Proposal, EBMUD will contribute \$5 million to a trust fund to provide for improvements to the American River Parkway.

The trust fund will be established and administered by the City of Sacramento in cooperation with Sacramento County to purchase park lands, provide recreational and environmental amenities and for other community purposes prioritized and approved by the trust funds administrators.

Attachment # 7 - Assurances

1. State legislation that would:
 - a. Allow EBMUD to take water diverted from the Lower American River at Site 5 above the Hodge threshold.
 - b. Allow EBMUD to export groundwater banked in Sacramento County.
 - c. Prohibit EBMUD from taking water diverted at Nimbus.
 - d. Prohibit EBMUD from taking water diverted at Site 5 below the Hodge threshold.
 - e. Prohibit EBMUD from selling water diverted from the American River to third parties.
 - f. Exempt the facilities in the Modified Proposal from Water Code Section 1810 (the "Katz" wheeling law).
 - g. Require that for EBMUD's service area to be expanded or if EBMUD is required to provide water to an area outside its service area, there must be an increase in EBMUD's supply and use of water sufficient to serve that area from sources other than the American or Mokelumne Rivers.
2. Amend the Hodge Decree to allow EBMUD to divert at Site 5, allow EBMUD to sell water diverted from the American River water to third parties as part of the conjunctive use program in Sacramento and San Joaquin, and prohibit EBMUD from taking water diverted at Nimbus.
3. Amend the Bureau of Reclamation's water rights to:
 - a. Add the Site 5 diversion location:
 - b. Expand the place of use to allow water to be banked in San Joaquin County;
 - c. Exclude Nimbus as a point of diversion for water delivered to EBMUD; and
 - d. Prohibit EBMUD from taking water diverted at Site 5 below the Hodge threshold.

4. Amend the contract between EBMUD and the Bureau to:
 - a. Add the Site 5 diversion location;
 - b. Exclude Nimbus as a point of diversion for water delivered to EBMUD;
and
 - c. Prohibit EBMUD from taking water diverted at Site 5 below the Hodge threshold.
5. Include in the contract between the City and EBMUD for facility operation and maintenance, provisions that:
 - a. EBMUD would not take water diverted at Nimbus:
 - b. EBMUD would not take water diverted at Site 5 below the Hodge threshold; and
 - c. EBMUD would not sell water diverted from the American River water to third parties
6. Include in the EIR and EIS for the project description:
 - a. The Modified Proposal is the only project.
 - b. All conditions (e.g. no Nimbus diversion, no diversions at Site 5 below the Hodge threshold, no sales to third parties, etc.) are specifically included as part of the project.

jebmud.prp
6-6-99 11:30 p.m.